From: Donald, Teresa, (038) Abby Fleming
To: Microsoft ATR
Date: 11/17/01 11:04pm
Subject: Please level the playing field

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Dear Department of Justice,

It is my personal opinion that the news reports of the proposed settlement with Microsoft do not do enough to encourage free trade. My reasons are as follows:

1. Promotes exclusive deals

Using a secure facility implies exclusive. The news report says that the details of programming code would be available at a secure facility. Let?s say that I as an individual would like to write an application. The availability of a secure facility is of little value to me unless I can afford to go there. To be of value to me across the nation then more information needs to be available on a national basis. It is only through nationally available information can a future generation of rising programming students have to information necessary to create a new wave of software companies. Free trade is promoted through competition.

2. Restricts free trade through bundling

The proposed deal allows Microsoft to use its dominant position in home computer operating systems to finance its venture into software applications. This bundling of software applications restricts free trade.

On the surface Microsoft appears to avoid the charge of bundling software since it does not separately sell the bundled software. At best I consider this a legal loophole. I consider Microsoft to be breaking the intent of the law. The intent of the law is to promote free trade.

Microsoft is using its dominant position in desktop operating systems to sell bundled software. In other words I would estimate that a significant portion of the cost of the upgrade of the operating system from Windows 98 SE to Windows Me is not the cost to improve the operating system but the costs associated with the applications such as media player that are bundled with the operating system. Windows Me is recognized by many as being inferior to Windows 98 SE. It is because of this inferiority that many computer distributors such as Dell offer the customer the choice of which operating system to install on new computers. But that is beside the point. The point is that what Microsoft is really selling is not a product to recover the cost to upgrade the operating system but is really selling bundled software such as media player to cover the cost to add this bundled software to the product offering.

The potential profit margins on Microsoft products are tremendous. A blank compact disk can be purchased for less than a dollar. A

pre-recorded compact disk with commercial artwork on the packaging and on the disk can be purchased for under five dollars. The Microsoft operating system on a compact disk cannot be purchased for under one hundred dollars. It is this large potential profit margin that leads to organized crime and software pirating. The Linux operating system can be downloaded over the Internet for no cost or purchased for less than fifty dollars. A retail box version of Linux usually comes with technical support to resolve installation problems. A Microsoft operating system when purchased with a new computer does not include any Microsoft installation support.

The bundling of a software application with the operating system accomplishes three purposes for Microsoft. (1) it adds value to the operating system which is intended to stir demand for upgrades (2) the major cost for an upgrade is not always the cost of updating the operating system portion of the upgrade but the added or bundled software; the cost for the bundled software is recovered in the operating system price, and (3) takes software revenue away from its competitors. Microsoft is using its dominant position in desktop operating systems to take software markets away from its competitors. This injures free trade. This can best be remedied by dividing the operating system and hardware (joysticks, mouse, keyboards, and xbox) portion of the Microsoft business from all other portions of Microsoft.

Windows XP combines the technology available in Windows 2000 with the technology available in Windows Me. Page 33 of the October 16 edition of PC magazine described some of the new features available in Windows XP. The features are described as follows:

?Tightly integrated features formerly available only from other software makers abound. Microsoft has built some of the features from scratch and used third parties (with which it will now compete) for others. At the top of the list are Windows Messenger instant-messaging software (targeted directly at AOL?s turf) and an improved Windows Media Player (taking on Real Networks? Real Player). Windows XP includes an Internet firewall, a Web cookie controller (watch out, Norton!), CD creation software (sorry, Roxio!), PPPoE support for use with ADSL connections (ante up, Wind River), and a file-and settings- transfer wizard (a la AlohaBob) to ease the transition between PCs...?

The above paragraph includes the competitors AOL, Real Networks, Norton, Roxio, and WindRiver. Many of these companies are publicly traded. If Microsoft can gain an unfair trade advantage over publicly traded companies such as these then some future college students who wants to be given the same opportunity as Bill Gates had will not have a chance. This discourages free trade.

3. Restricts free trade through dominant position

Microsoft has a dominant position for desktop computer operating systems. It is using this position to restrict the ability for competitors to create competing applications that run on the operating system. It does this by not sharing application development information. This injures free trade.

Twenty years ago it was very popular for a computer manufacturer to create and maintain an operating system that will run on the latest computer being sold. Many manufacturers supported Unix since over 90% of the code is in the public domain an the remaining 10% is the device drivers to support the hardware. The Unix operating system is written in the ?C? programming language. Microsoft operating systems are written in either the ?C? programming language or the object oriented version of the ?C? programming language called ?C++?.

Computers are not sold because they are pretty but because they provide value in productivity (workplace software) or entertainment (games, movies). In this environment a computer manufacturer would want as many applications as possible to run on their operating system. They would provide documentation on operating system calls with every computer sold. Information needed to create an application was not referenced as company secrets.

Microsoft has established the Microsoft logo program as a way to test software applications to ensure that they are taking advantage of new operating system features and avoiding problems that were present in the older operating systems. Programs that pass the tests are eligible to have the Microsoft logo artwork added to the retail box packaging.

Microsoft sells programming languages that run on their operating system. Last year I purchased ?Visual Basic 6.0 Deluxe Learning Edition?. It came with a compact disk and two manuals. Neither manual included the information needed to be able to write a program to install a software application. It contained a package and deployment wizard that included some source code that could be customized and some object code without the source code. Neither the manuals nor the source code provided the information necessary to meet Microsoft?s logo program.

I have been researching the Microsoft web site and other sources of information for information on how to write an installation program for a software application that will only display a help file. I want this software application to be compliant with the logo program. I also want this program to make registry calls using Unicode and support operating systems such as NT/2000/XP. What I have found is that two different third party books recommend the purchase of an installation program from another third party.

By not making application creation information available Microsoft is discouraging free trade.

4 Restricts free trade through dominant position

Historically many market leaders do not like standards. Microsoft
appears to be no exception. Many market observers discussed how that
JAVA became popular for its ability to work across many different
computer operating systems. A subset of JAVA was called JavaScript and
is supported by the Netscape web browser.

The Linux operating system does not require a web browser. A Netscape
web browser is available for the Linux operating system. Microsoft
claims that their web browser is an integral part of the operating
system. My personal observation is that Microsoft calls many software
applications part of the operating system for the reasons outlined
earlier.

Microsoft also sells and supports programming languages. They used
their expertise in programming languages to give Internet Explorer
version 5.0 the ability to do things that cannot be done by JavaScript.
By including the price to develop this software in the cost of the
operating system gave Microsoft an unfair trade advantage. They were
able to supply this product for ?free? as a feature of the operating
system rather than charging a price for each copy as was once done by
their competitors.

Much of the Internet?s wide acceptance has been established by industry
standards. Microsoft used its dominant position in operating systems to
distribute its web browser. Once it has a dominant position in the web
browser marketplace it developed and implemented its own version of new
Internet standards. The dynamic HTML available in Microsoft Internet
Explorer is not compatible with Netscape. The result of this
incompatibility is that some web sites could not afford to continue
doing web software development for both browsers. They chose to go with
the dominant player Microsoft. This bully tactic by Microsoft is an
injury to free trade.

The Windows XP operating system includes Internet Explorer 6.0. This
web browser is available for download for use on earlier operating
systems. It supports an Internet draft standard for handling privacy
issues associated with web cookies. The release of a product that
supports a draft standard by a company with t dominant share of the
market is acting like a bully. A bully should be treated as a bully.

The Microsoft .NET initiative is intended to radically change the way
that web development is done. Microsoft is using their programming
experience to offer programming language support to web servers. The
new programming language is called ?C#?. This is intended to create a
dramatic impact to web servers as these programming languages can
replace scripts written in Microsoft?s ASP languages or competing script

languages such as PERL.

The cost of development of the .NET initiative has to be carried by
Microsoft major sources of revenue. These are the operating system and
Microsoft Office. Microsoft is again using its dominant position in
operating systems to grow into other software markets. This injures
free trade. It provides an unfair trade advantage.

The Windows operating system is written in the programming languages ?C?
and ?C++?. The Linux operating system is also written in ?C?. The new
programming language ?C#? is not intended for use in operating system
development or enhancements.

5. Pricing discrepancies

One report claims that 80% of the motherboards made for personal
computers are made in Taiwan. Some of the cards that plug into
motherboards are made in China. Many electronic assemblies are made
overseas where labor rates are less expensive. The home desktop or
tower computer is no longer solely an American product. The technology
no longer exists solely in America. Personal computers is an
international market.

Many computer dealers assemble components and preload the operating
system onto the hard drive. The hardware drivers are not written by the
computer dealers but by the companies that made the computer
components. This applies to the drivers for video cards, printers,
modem cards, sound cards, and compact disks. Industry standard drivers
are usually available for the disk controllers and compact disks.

Microsoft offers the same product for two prices. I consider this to be
illegal. The operating system is sold for one price when preloaded and
another price in a retail box. One magazine ad has the Windows XP Home
Edition Full OEM version for $104. Another ad lists the retail box
edition of the same software for $299.99. Many software games are sold
in Walmart in retail boxes for $30.00. Therefore the cost of
manufacturing and distribution of the retail box should be reasonably
less than $30.00.

The intention by Microsoft is that the computer dealer that loads the
software would become responsible for any installation support regarding
the operating system. This may be true for some computer dealers. It
is not true for all computer dealers. Some computer dealers sell
computers with no technical support. They require a customer to
directly contact the manufacturer of the hardware component for
operating system device driver support or installation support.

The Microsoft agreement with a computer dealer cannot be a contract with
the suppliers to the computer dealer. No money changes hands between

these parties so therefore no contract exists. In these situations
Microsoft is charging different prices for the same product.

   6. Agreements

Some reports say that Microsoft is using its dominant position in the
marketplace to force computer dealers to limit the icons that a computer
dealer can place on the desktop. I consider this to be illegal since it
restricts free trade. It allows Microsoft to promote other products
that it sells while discouraging the promotion of competing products.

I support the court ruling that allows computer dealers to have more
control of the icons placed on computer desktops.

7. Tying

Anytime that one company promotes another company?s product then I am
considered about tying arrangements, kickbacks, or promotion fees.

Microsoft has realized that installation is a problem and has released
for distribution the customer version of a Windows Installer program.
This program was released with Windows 2000 but is available for
installation on earlier operating systems. The upgrade from Internet
Explorer version 5.0 to 5.5 will require the installation of this
software before the upgrade can occur. Microsoft web site also
recommend two companies where the software developer can purchase the
application that creates the installation package. Both companies want
over $1000 for the package. This causes me to wonder whether or not
either of these companies have exclusive deals with Microsoft or if
Microsoft has a financial interest in either one. Hiding information
discourages free trade.

Microsoft web site promotes Verisign as a root authority for issuing
certificates. Certificates are a means to implement security. There
are many companies that issue certificates. Root authorities are
visible by selecting tools, Internet options, content, certificates,
trusted root certification authorities. Why did the company ?Verisign?
get singled out for attention?

It is acceptable for Microsoft to permit applications developers to sign
their work with a digital signature or to encrypt their work with a
certificate. However Microsoft should not require either step. If
either step is required then Microsoft one step closer to tying the
development of an application with another independently sold product.
If this is a requirement it will restrict free trade.

Sincerely,

Donald Fleming

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